



Paper No. 78

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In re Application of
David McCarter and Jared Schutz
Application No. 09/847,644
Filed: May 2, 2001
Attorney Docket No. PROFLOWERS-P
Title: GENERATING A COURIER SHIPPING
LABEL OR THE LIKE, INCLUDING AN
ORNAMENTAL GRAPHIC DESIGN, AT NON-
COURIER PRINTER

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: DECISION REFUSING STATUS
: UNDER 37 C.F.R. §1.47(a)
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This is in response to the petition under 37 C.F.R. §1.47(a), filed August 22, 2001.

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on May 2, 2001, without an executed oath or declaration and identifying David McCarter and Jared Schutz as joint inventors. Accordingly, on May 29, 2001, a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" was mailed, requiring an executed oath or declaration in compliance with §1.63. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition and paid the surcharge for late filing of the declaration¹. To make timely this reply, applicant also filed a request for a one (1) month extension of time (and fee). Accompanying the petition was a declaration executed by the signing inventor, Jared Schutz, a declaration executed by William Strauss, the President and CEO of the assignee corporation, copies of the certified mail receipt and shipping information, along with the associated letter which was sent to the non-signing inventor, a copy of the employment agreement between the assignee and the non-signing inventor, an assignment agreement signed by the signing inventor, and a declaration and power of attorney signed by the signing inventor.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventors.

¹These fees have been charged to petitioner's Deposit Account, as authorized in the petition.

Rule 47 applicant has met requirements (1), (3), and (4) above.

The declaration of William Strauss shows that a copy of the patent application, declaration, and assignment document was sent to the last known address of the non-signing inventor on two separate occasions. Both times the package was not claimed, and was returned to the sender. This action can reasonably be construed as a refusal on the part of Mr. McCarter to sign the declaration.

Regarding item (2) above, the petitioner has not included an acceptable oath or declaration. The submitted declaration is lacking in that it fails to list the name, post office address, and citizenship of each inventor.

Thus, on renewed petition, applicant must submit a declaration that is in compliance with 37 CFR 1.63.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Receipt of the formal drawings and the assignment is acknowledged. The assignment documents have been forwarded to the Assignment branch for recordation.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.



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Supervisory Petitions Examiner
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Office of the Deputy Commissioner
for Patent Examination Policy